

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN W. MITCHELL, JR.,

07 Civ. 8268 (PKC)

Plaintiff,

-v-

PRISON HEALTH SERVICES, INC., ROBERT
DE GUZMAN, M.D., Official Capacity, MS.
DAVIS, Nurse, MS. BAPTISTE, RN, Official
Capacity,

Defendants.

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PLEASE TAKE NOTICE that, upon the annexed Declaration of PAUL STUART HABERMAN, sworn to on the 18th day of July, 2008, along with the Memorandum of Law and accompanying exhibits, and upon all prior pleadings and proceedings heretofore had herein, the Defendants will move this Court at United States District Court, Southern District of New York at 500 Pearl Street, New York, New York, 10007, at a date to be determined by the Court, for an Order, (A) (i) pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, dismissing the Plaintiff's Complaint for failure to state a cause of action against the Defendants under 42 U.S.C. 1983; or in the alternative, (ii) for summary judgment pursuant to Federal Rules of Civil Procedure Rule 56, because on this record there are no triable issues of fact; and granting Defendants such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, opposition papers, if any, must be served on the undersigned on or before August 18, 2008.

PLEASE TAKE FURTHER NOTICE that, reply papers, if any, will be served on or before August 29, 2008.

Dated: New York, New York
July 18, 2008

HEIDELL, PITTONI, MURPHY & BACH, LLP

By:


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